

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Billed Party Preference for InterLATA)
0+ Calls)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

CC Docket No. 92-77

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REPLY COMMENTS OF SPRINT CORPORATION

Sprint Corporation hereby replies to the initial comments filed in response to the Commission's Second Further Notice of Proposed Rulemaking (FCC 96-253, released June 6, 1996) in the above-captioned proceeding.

I. INTRODUCTION AND SUMMARY

These reply comments address three points. First, the Commission should not foreclose future consideration of billed party preference as a means of addressing the structural problems in the operator services market. Second, it is entirely permissible -- and fully consistent with Commission precedent -- to base benchmark rates on the costs of an efficient carrier (or group of carriers), rather than entitling inefficient carriers to recovery of their costs. Third, there is no sound public interest reason for requiring all operator services providers (OSPs) to disclose their rates on all calls.

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II. THE COMMISSION SHOULD NOT FORECLOSE FUTURE IMPLEMENTATION OF BILLED PARTY PREFERENCE

A few parties ask the Commission to reject billed party preference once and for all.¹ Sprint opposes these requests. Sprint shares the view of many other parties² that billed party preference may be a better long term solution for the problems that have plagued consumers of operator services than the benchmark proposal here at issue. The Commission has amassed a substantial record on the benefits of billed party preference, and there is no reason to lose the benefit of that record -- and more importantly, the potential benefits of billed party preference to the public -- by foreclosing further consideration of that alternative at a later date.

III. HIGH COST CARRIERS ARE NOT ENTITLED TO COST RECOVERY

Many opponents of the Commission's proposed benchmark argue against a benchmark based on the rates of the three largest OSPs on the ground that smaller OSPs have higher costs and are entitled to recover those costs.³ The policy they advocate would reward inefficiency and would be contrary to

¹ See American Public Communications Council (APCC) at 12; Bell Atlantic, BellSouth and NYNEX at 9; and Competitive Telecommunications Association (CompTel) at 20-22.

² See e.g., California Public Utility Commission (CPUC) at 2-3; Citizens United for Rehabilitation of Errants at 2-3; Richard Foley at 1; MCI at 2-3; NARUC at 1; and Public Utility Commission of Ohio at 3.

³ See e.g., America's Carriers Telecommunication Association at 5 (ACTA); AT&T at 2; Cleartel/Conquest Operator Services Corp. (Cleartel) at 8; ONCOR at 8; and One Call Communications at 3.

longstanding Commission precedent. Almost at its inception, the Commission developed a policy that rates in a multi-carrier market should be based on the costs of an efficient "bellwether" carrier rather than industry average costs or the costs of high-cost carriers:⁴

We are under no duty to fix rates for domestic telegraph service so that all carriers engaged therein may earn a fair return on the fair value of their property devoted to that service or even make some profit on their operations.

This view was reaffirmed a decade later:⁵

The rate increases which we will now permit may fall short of producing a fair return for the international telegraph communications industry as a whole, and for certain of the carriers. Contrary, however, to the contentions made by the American Cable and Radio group of companies, the Commission does not consider that it is obliged by the Communications Act to fix international telegraph rates so as to meet the over-all requirements of the industry as a whole.

Following this same policy yet another decade later, the Commission explained why rates in a competitive market should not be based on industry average costs:⁶

⁴ Postal Telegraph-Cable Company et al., 5 FCC 524, 527 (1938).

⁵ Charges for Communications Service Between the United States and Overseas and Foreign Points, 12 FCC 29, 62 (1947).

⁶ The Western Union Telegraph Co., 25 FCC 535, 580 (1958) (footnote omitted).

This is so because the adoption of an industrywide approach would, by averaging the requirements of competitors, deprive the public of the opportunity for rate benefits which were one of the reasons for introducing competition in the first place. An industry approach to ratemaking is in effect a guarantee to the less competent or less efficient operator that his failure to measure up in the competitive race will be rewarded. The industry approach would thus serve to deprive the public of the benefit of competitive ratewise.

Instead, the Commission reiterated its previous policy that it should fix rates no higher than necessary to "enable a sufficiently large segment of the industry to earn a fair rate of return" (id. at 561, footnote omitted). For this purpose, the Commission focused on a bellwether carrier -- a carrier sufficiently large to constitute "a substantial segment of the industry" -- that had the highest reporting earnings (id. at 581-83).⁷ This bellwether concept continued to be embraced by the Commission into the 1980's,⁸ before sufficient competition emerged in those markets to supplant the need for rate regulation. Thus, basing a benchmark rate on the costs of the three largest OSPs is fully consistent with both Commission precedent and sound public policy.

The fact that carriers with admittedly (or allegedly) higher costs than Sprint, AT&T and MCI can charge -- and want

⁷ The carrier chosen in that case had a market share of 33% (id. at 582).

⁸ See ITT World Communications, Inc., 82 FCC 2d 282, 285-86 (1980); and 85 FCC 2d 561, 567 (1981).

the right to continue charging -- higher rates for their services is indicative of market failure. Ordinarily, if competition were effective, carriers would be constrained to charge prices set by the market and thus would not enter or could not remain in the market unless their costs were reasonably comparable to the costs of their major competitors.

IV. THERE IS NO PUBLIC INTEREST BASIS FOR REQUIRING ALL OSPs TO DISCLOSE RATES (OR THE AVAILABILITY OF RATE INFORMATION) ON ALL CALLS

Several parties have urged the Commission to require all carriers -- not just those that charge high rates -- to disclose either their actual rates, or the fact that rate information is available on request, on all 0+ calls.⁹ Such a requirement misses the point. It is the OSPs that charge high rates that cause consumer complaints and dissatisfaction, not the OSPs that account for large majority of 0+ calls. The fact that 0+ rates of major carriers are higher than their 1+ rates -- the excuse offered by some parties for requiring such universal disclosure -- is well known to the public and has not been a source of significant consumer complaints. Requiring all carriers to make a disclosure on all

⁹ See ACTA at 6-7; CPUC at 3-4; Cleartel at 19; National Association of Attorneys General at 4-6; New York Department of Public Service at 1; ONCOR at 14; One Call at 8; and Operator Services Co. at 3.

calls would increase the costs of service to the public and would delay completion of all 0+ calls for no good reason.

Respectfully submitted,

SPRINT CORPORATION

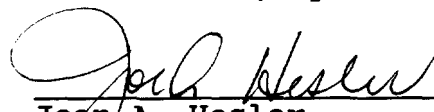
A handwritten signature in dark ink, appearing to read "Leon M. Kestenbaum", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I, Joan A. Hesler, hereby certify that on this 16th day of August, 1996, a true copy of the foregoing document was served first class mail, postage prepaid, or hand delivered, upon each of the parties listed below.


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